Supreme Court, U.S.
FILED
04-667 SEP 1 - 2004
OFFICE OF THE CLERK

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

SHERRY WHITE-BATTLE,
Petitioner,

V.

DEMOCRATIC PARTY OF VIRGINIA,
NORFOLK CITY DEMOCRATIC COMMITTEE,
GEORGE SCHAEFER,
AND
NORFOLK ELECTORAL BOARD,

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

Sherry White-Battle
1225 Boissevain Avenue
Norfolk, Va. 23507
(757) 622-2112

Petitioner Pro se.

QUESTIONS PRESENTED

I. Did the trial court, which had been sued and was being sued by the litigant, deny the civil litigant due process of law under the Fifth and Fourteenth Amendments by not recusing itself from hearing the case?

II. Did the trial court deny a civil litigant due process of law under the First and Fourteenth Amendments when it denied her access to the courts of Virginia?

III. Did the trial court deny a civil litigant due process under Fifth and Fourteenth Amendments when it failed to give the civil litigant notice and an opportunity to be heard before the civil litigant's interests were terminated?

IV. Did the trial court, enforcing the Order of Pre-Filing Injunction against the civil litigant, violate her due process rights under the Fifth and Fourteenth Amendments when the trial court was given unbridled statutory discretion in the first instant to enter the Order of Pre-filing Injunction?

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Petitioner, Sherry White-Battle ("Battle") respectfully requests that a writ of certiorari be issued to review the order of the Supreme Court of Virginia.

OPINION BELOW

The Supreme Court of Virginia denied the petition for appeal on, June 3, 2004 (Record No. 040376). The opinions were not published. The Circuit Court of the City of Norfolk, Case No. CH03-2074, entered its Orders on November 20, 2003, December 3, 2003 and December 15, 2003.

STATEMENT OF JURISDICTION

The Order of the Supreme Court of Virginia ("Virginia Supreme Court") was entered on June 3, 2004.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a).

CONSTITUTIONAL, STATUTORY AND RULE PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution, provides in relevant parts: "No person shall… be deprived of life, liberty, or property without due process of the law…"

The Fourteenth Amendment to the United States Constitution provides in relevant part that: "No State shall… deprive any person of life, liberty, or property without due process of the law…"

Section 8.01-271.1 of the Code of Virginia provides: "Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and the attorney's address shall be stated on the first pleading filed by that

attorney in the action. Party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se., shall sign his pleading, motion, or other paper and state his address.

The signature of an attorney or party constitutes a certificate by him that(i) he has read the pleading, motion, or other paper,(ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and warranted by existing law, or good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost litigation. If a pleading, written motion, other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

An oral motion made by an attorney or party in any court in the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper or making of the motion, including a reasonable attorney's fee."

STATEMENT OF THE CASE

To fully appreciate the significance of the issues presented in this case, it is essential to consider the procedural background.

On November 17, 2003, Sherry White-Battle ("Battle") attempted to file suit by lodging it in the Clerk's Office of the Norfolk Circuit Court to contest the election of George Schaefer ("Schaefer") as the successful democratic candidate for the Clerk of the Norfolk Circuit Court, which election took place on November 4, 2003. Battle further sought declaratory relief, which was authorized by Virginia Code Section 24.2-807 et. seq. and Virginia Code Section 8.01-184.

Judge Everett A. Martin, Jr., ("Judge Martin") decided to hear the case.

Battle had strongly objected to Judge Martin hearing her case because she had then sued Judge Martin and other Judges of the Norfolk Circuit Court, and she was then suing Judge Martin and other judges ofn the same court in a civil rights suit in the Supreme Court of Virginia, Battle v. Poston, et al., Record No.032348. Over Battle's objections, Judge Martin presided and ruled on this case. In Battle's appeal to the Supreme Court of Virginia, Battle v. Democratic Party of Virginia, et al., Record No. Ch. 03-2074, the Supreme Court of Virginia failed to address, among other things, the issue of Judge Martin's qualifications to hear Battle's case. While this case Sherry D. Battle v. Poston et al., Record No. 03-1168, was still on appeal to this Court, Judge Martin ruled on Battle's case, notwithstanding Virginia's judicial canons and the Judges of the Norfolk Circuit Court's long-standing policy of recusing themselves from hearing Battle's cases.

In Battle's attempts to file suit in the Norfolk Circuit Court, she was required by the Order of Pre-Filing Injunction ("Order") entered on October 18, 2002 by the Norfolk Circuit Court to obtain leave from the court before further filings in the court and the courts in the State of Virginia. APP.C. The Order does not require Battle to send copies of her motion seeking leave to file suit to opposing counsels. However, the Order does require Battle to send the Order granting the motion to oppose counsels. In accordance with the Order, Battle filed a motion seeking leave to file suit, attaching the Complaint she intended to file against the proposed defendants- respondents.

On November 20, 2003, Judge Martin of the Norfolk Circuit Court entered a Decree denying Battle's motion. In his Decree, Judge Martin noted that Battle had lodged with the Clerk's Office all the documents required by the Order. While this suit, the new suit, was never filed, Judge Martin used the same chancery case number of CH03-2074 of another case. With regard to Battle's request for Declaratory Judgment, Judge Martin stated that the election had been held and it was too late for Battle to claim that the winning candidate was improperly nominated. Decree, p. 1. He stated the government had expended considerable money and effort in conducting the election.

Virginia Code, Section 24.2 -807 provides that "…The contest shall be initiated only be a written complaint of one or more of the unsuccessful candidates. The Complaint shall contain (i) objections to the eligibility of the contestee based on specific allegations, (iii) objections to the conducts or results of the election accompanied by specific allegations which, if proven to be true, would have a probable impact on the outcome of the election or both."

With respect to Schaefer's "eligibility," Judge Martin construed "eligibility" to refer only to the qualification to

hold office prescribed in the Constitution of Virginia, Art. II, Sections 1, 5, and Virginia Code Section 15.2-1601. Decree, p.2. Judge Martin added the pleadings contained no specific allegations that Schaefer was ineligible. Decree p. 2.

With respect to "the conduct or results of the elections" Judge Martin concluded that Battle's pleadings fell far short of "specific allegations which, if proven true, would have a probable impact on the election..."

On December 2, 2003, Battle filed with the trial court a motion for the court to reconsider its Decree of November 20, 2003, which denied her leave to file suit against the proposed respondents. With her motion to reconsider, Battle filed another Complaint which contained numerous specific allegations addressing Schaefer's eligibility and the conduct and result of the election of November 4, 2003, as required by Judge Martin. The motion and the Complaint was accompanied with an affidavit and a Memorandum In Support of Battle's Motion To Reconsider The Decree of November 20, 2003.

On December 3, 2003, Judge Martin entered a Decree, stating "The Court has reviewed the plaintiffs' motion for reconsideration. It is denied." On December 11, 2003, Battle filed a Petition For Writ Of Certiorari with this Court.

On December 12, 2003, Battle filed with the court a second motion for it to reconsider its Decree of November 20, 2003 and December 3, 2003, and, on December 15, 2003, it was denied.

On December 19, 2003, Battle filed her Notice of Appeal with the Clerk of the Norfolk Circuit Court, appealing the Decrees to the Supreme Court of Virginia, and on June 3, 2004, the Supreme Court denied Battle's petition to for appeal.

REASONS FOR GRANTING THE WRIT

I. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULING OF THE ESSENTIAL RIGHTS OF LITIGANTS TO HAVE THEIR CASES HEARD BY A FAIR AND NEUTRAL JUDGE

In the case at bar, Battle's due process rights were violated in that the Virginia Supreme Court, by denying review of the Norfolk Circuit Court's decrees, did not afford Battle to be heard by a fair and neutral decision-maker, judge.

The Due Process Clauses of the Fifth and Fourteenth Amendments provide that: "No State shall... deprive any person of life, liberty, or property without due process of law." This Court has previously and consistently held that due process contemplates fair process, which requires at least an opportunity to present objections to proposed action to a fair and neutral judge. See Daniels v. Williams, 474 U.S. 327(1986); Davidson v. Williams, 474 U.S. 344(1986). Matthews v. Eldridge, 424 U.S. 319(1976). The decision must be rendered by an impartial or unbiased decision-maker. See Goldberg v. Kelly, 397 U.S. 254(1970).

In the case at bar, Battle filed a motion seeking leave to file pursuant to the Order entered against her in Battle v. Poston et al., At Law No. L02-1383. APP.C. While Battle had objected to Judge Martin hearing her case because a suit (Battle v. Poston et al. Record No. 032348) was then pending before the Supreme Court of Virginia in which he was one of the named defendants, he ruled on Battle's case anyway. While the Supreme Court of Virginia had denied Battle's request for a temporary injunction, in Battle v. Democratic Party of Va., et al. Ch. No. 03-2074, it failed to address,

among other things, the issue of Judge Martin's qualifications to her Battles cases. Judge Martin insisted on ruling on Battle's case, notwithstanding the Judges of the Norfolk Circuit Court's long-standing policy of recusing themselves from hearing Battle's cases. Battle also respectfully objected to Judge Martin enforcing the Order until after this Court had acted on her Petition For Writ Certiorari in the case of Sherry D. Battle v. Charles Poston, et al. Record No.: 03-1168.

Battle's Complaint was filed pursuant to Section 24.2-807 of the Code of Virginia. Section 24.2-807 provides, in pertinent part, that: "…The contest shall be initiated only by a written complaint of one or more of the unsuccessful candidates. The complaint shall contain (i) objection to the eligibility of the contestee based on specific allegations, (ii) objections to the conduct or results of the election accompanied by specific allegations which, if proven true, would have a probable impact on the outcome of the election, or (iii) both…"

Battle was entitled to have the filing of her complaint decided by a fair and neutral judge.

II. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON THE ESSENTIAL RIGHTS OF CIVIL LITIGANTS TO HAVE ACCESS TO THE COURTS.

This Court has long held that right of access to the courts is protected by the First Amendment. E.g., N.A.A.C.P. v. Button, 371 U.S. 415, 429-30(1963); California Transport v. Trucking Unlimited,, 404 U.S. 508, 513(1972). The right to run for public office touches on two fundamental freedoms: freedom of individual expression and freedom of

association. This Court, in Button v. N.A.A.C.P., supra, at 444, declared, among other things, that the petitioner's rights were protected under the First Amendment because the petitioner was engaged in activities of expression and association on behalf of the rights of Negro children to equal opportunity. This court, in California Transport v. Trucking Unlimited, supra at 513, held that the petitioners had the right of access to the agencies and courts to be heard on applications sought by competitive highway carriers. That right is part of the right of petition protected by the First Amendments.

In the case at bar, Judge Martin violated Battle's First Amendment right of free speech and freedom of association, and thus denied her access to the courts of the Commonwealth of Virginia. The facts as contained the Statement Of The Case are incorporated herein by reference.

III. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON THE ESSENTIAL DUE PROCESS RIGHTS OF LITIGANTS TO HAVE NOTICE AND OPPORTUNITY TO BE HEARD BEFORE LITIGANTS' INTERESTS ARE TERMINATED.

In the case at bar, Battle was provided with no notice and opportunity to be heard before she was denied access to the Norfolk Circuit Court. It is noteworthy that no objections were raised by the respondents with respect Battle's motion for leave to file suit.

This court has traditionally held that Due Process Clauses of the Fifth and Fourteenth Amendments protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or plaintiffs attempting to redress grievances. Logan v. Zimmerman

Brush Co., 455 U.S. 422, 429(1982). In the Logan case, this Court made note of the following observation of Justice Jackson in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306(1950): "Many controversies have raged about the cryptic and abstract words Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id., at 428. In the Logan case, this Court was faced with a two-part inquiry: whether Logan was deprived of a protected interest, and if so, what process was his due. Id. The first question was settled in the affirmative by this Court, relying on the Mullane case, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. Id. In the Mullane case, the Court was confronted with a challenge to a state law that provided for settlement of common trust fund account of fiduciaries, upon notice given through newspaper publication. The effect of the statute was to terminate every night which beneficiaries would otherwise have against the company... for improper management of the common trust fund." Id., at 429(citing Mullane at 311). This Court concluded, worked to deprive beneficiaries of property by, among other things, "cut[ling] off their rights to have the trustee answer for negligent or illegal impairments of their interests. "Id., (citing Mullane at 313). Such result was impermissible unless constitutionally adequate notice and hearing procedures were established before the settlement process went into effect. Id., (citing Mullane at 315). Despite appellee Zimmerman Brush Company's arguments to the contrary, this Court found no meaningful distinction between the cause of action at issue in the Mullane case and Logan's rights to use the Fair Employment Practice Act(FEPA). Logan, supra at 429.

In Societe International v. Rogers, 357 U.S. 797, 209(1958), where the plaintiff's claim had been dismissed for failure to comply with a trial court's order, this Court read the "property" component of the Fifth Amendment's Due Process clause to impose "constitutional limitations upon power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." Id., at 209.

The Fourteenth Amendment's Due Process Clause has been interpreted by this Court as preventing the State from denying potential litigants use of established adjudicatory procedures when such an action would be "equivalent of denying them an opportunity to be heard upon their claimed right[s]."Logan, at 429-30(citing Boddie v. Connecticut, 401 U.S. 371, 380(1971)).

In the Logan case, this Court held that the Fourteenth Amendment requires "an opportunity... granted at a meaningful time in a meaningful manner and;"(citation omitted) "for [a] hearing appropriate to the nature of the case(citing Mullane at 313 and Boddie v. Connecticut, supra at 378.)

In the case at bar, like in the Logan's case and other cases cited herein, Battle's cause of action against the respondents is a species of property protected by the Fourteenth Amendment's Due Process Clause. Battle was due, at a minimum, a notice and opportunity to be heard on her election case before her case was dismissed by Judge Martin.

IV. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON ESSENTIAL DUE PROCESS RIGHT THAT A STATUTE CANNOT GIVE STATE OFFICIALS UNBRIDLED DISCRETION.

In the case at bar, Judge Martin had no authority to enforce the Order, since the court when entering the Order on October 18, 2002 had no jurisdiction under Section 8.01-271.1 of the Code Section of Virginia to enter the Order of Pre-Filing Injunction against Battle. Because the Norfolk Circuit Court was concerned about Battle's previous filings of lawsuits against judges and other officials of the Norfolk Circuit Court, it entered the Order against Battle which provides, among other things, that Battle "...is restrained from further filings in this Court and the courts of the State of Virginia without prior leave of the court in which the action to be instituted..."

Section 8.01-271.1 of the Code of Virginia provides in pertinent parts, that "...If a pleading or other paper is signed or made in violation of this rule the court... shall impose upon the person who signed the paper... an appropriate sanction, which may include an order to pay to the party or parties the amount reasonable expenses incurred... including attorney fee." A court should normally construe a statute in accord with its ordinary or natural meaning. See Smith v. United States, 508 U.S. 223, 228(1993). It has been held that, if a statute gives state officials unbridled discretion, it is void on his face. Lovell v. City of Griffen, 303 U.S. 444(1938). In the Lovell case, this Court held, among other things, that if a statute gives licensing officials unbridled discretion, it is void on it face, and speakers need not even apply for a permit. They may exercise their First Amendment rights even if they could

have been denied a permit under a valid law, and they may not be punished for violating the licensing statute. If a statute fails to give persons reasonable notice as to what is prohibited, it violates the Due Process Clause. See e.g., Papachristou v. City of Jacksonville, 405 U.S. 156(1972). In Gentile v. State Bar, 501 U.S. 1030(1991), a statute prohibited attorneys representing clients in a pending case from making statements that would have a substantial likelihood of prejudicing a trial, but allowing attorneys to make public statements regarding the "general nature of the defense" they would present at trial, this Court found the statute to void for vagueness, because it did not give fair notice of the type of trial-related statements that were punishable.

In the case at bar, Section 8.01-271.1 of the Code of Virginia("Section 8.01-271.1") provides no authority for the Norfolk Circuit Court to enter an order of pre-filing injunction against Battle, which allows courts of Virginia to impose "an appropriate" sanction..." (Emphasis added). Section 8.01-271.1 give Virginia's judges unbridled discretion with no defined standards for applying the law. E.q., Rule 11(1)(B)(2) of Fed. R. Civ. P. Section 8.01-271.1 fails to give Battle fair notice of what is prohibited. It is void for vagueness, Judge Martin applying the order entered pursuant to Section 8.01-271.1, on October 18, 2002 violated the Due Process Clause. This principle should be applied strictly when First Amendment activity is involved, as in the case at bar, such is Section 8.01-271.1, to avoid the chilling effect a vague law might have on freedom of expression and freedom of association.

CONCLUSION

This case presents questions of exceptional importance-whether civil litigants have a right to have their cases heard by a neutral decision-maker; whether civil litigants have a right of access to the courts; whether civil litigants are entitled to reasonable notice and opportunity to be heard before their interests are terminated by a state official; and whether a statute should give civil litigants fair notice of the prohibited act before punishment under the Due Process Clause.

If the opinion below is allowed Battle, a voter and unsuccessful candidate, and other civil litigants will be denied due process and will continuous be subjected to arbitrary abuse by the Virginia's courts, especially with respect to civil litigants access to the courts of Virginia.

It should, again, be noted that none of the respondents participated in the case below. They provided no objections to any of the claims raised in Battle's pleadings Battle filed in the courts below.

Accordingly, Battle respectfully requests that her petition for writ of certiorari be granted.

Respectfully submitted,

Sherry White-Battle
1225 Boissevain Avenue
Norfolk, Virginia
(757) 622-2112

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

SHERRY WHITE-BATTLE,
Petitioner,

V.

DEMOCRATIC PARTY OF VIRGINIA,
NORFOLK CITY DEMOCRATIC COMMITTEE,
GEORGE SCHAEFER,
AND
NORFOLK ELECTORAL BOARD,

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Virginia

APPENDIX

Sherry White-Battle
1225 Boissevain Avenue
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(757) 622-2112

Petitioner Pro se.

APPENDIX

APPENDIX A	Order of the Supreme Court of Virginia filed on June 3, 2004
APPENDIX B	Order or Decrees of the Circuit Court of the City of Norfolk, Virginia, entered on November 20, 2003, December 3, 2003 and December 15, 2003.
APPENDIX C	Orders of the Circuit Court of the City of Norfolk, Virginia entered on October 18, 2002.

VIRGINIA:
In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 3rd day of June, 2004.

Sherry White-Battle,
Appellant,

against Record No. 040376
Circuit Court No. CH03-2074

Democratic Party of Virginia, et al.,
Appellees.

From the Circuit Court of the City of Norfolk

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Patricia H Krueger, Clerk

By:

Deputy Clerk

APPENDIX A

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

SHERRY WHITE-BATTLE,
Plaintiff,

v.

CH03-2074

DEMOCRATIC PARTY OF VIRGINIA, *et al.*
Defendants.

DECREE

The plaintiff has lodged with the Clerk's Office a motion seeking leave to file suit pursuant to the Order of Pre-Filing Injunction entered against her in Battle v. Poston, *et al.*, At Law No. L02-1383. She has also filed a "motion for leave to amend the bill of complaint." The Court is uncertain whether she wishes to file a new suit or amend the complaint in White-Battle v. Democratic Party of Virginia, *et al.*, the Court will treat her new filing as a motion to amend. Whether it is considered a motion for leave to file a new suit or to amend a pending suit has no effect on the Court's decision.

In the present pleading the plaintiff again seeks a declaratory judgment that George Schaefer's nomination as the Democratic Party's candidate for the Office of Clerk of the Circuit Court was illegal. She also contests Mr. Schaefer's election as Clerk-elect pursuant to Code of Virginia §24.2-807 *et seq.* The Court first notes that the plaintiff has lodged with the Clerk's Office all the documents required by the Order of Pre-Filing Injunction. However, after having reviewed the factual allegation in her present pleading, her motion for leave to file/amend is denied for the reasons set forth in this decree. .

APPENDIX B

Declaratory Judgment

By decree of October 23, 2003, the Court denied the plaintiff's application for a temporary injunction to remove Mr. Schaefer as the Democratic Party's nominee. The Court did not dismiss the suit in its entirety. One of the reasons the Court then gave for denying the injunction, laches, applies with more force today that it did then. The election has been held. The government has expended considerable money and effort in conducting the election. It is far too late to claim that the winning candidate was improperly nominated.

Election Contest

Code of Virginia § 24.2-807 permits an unsuccessful candidate, such as the plaintiff, to contest an election based on either objections to the "eligibility of the contestee" or "the conduct or results of the election," or both. That statute also requires the unsuccessful candidate to make "specific allegations" in the complaint.

With respect to Mr. Schaefer's "eligibility," the plaintiff would appear to rely on her allegations about the alleged impropriety of his nomination. Such allegations, even if true, would not affect his "eligibility." "Eligibility" has been defined as "the quality or state of being eligible, esp. legal qualification for election..." Random House Dictionary of the English Language(1967). The second definition of "eligible" in that same source is "legally qualified to be elected or appointed to office." Thus I construe "eligibility" in §24.2-807 to refer only to the qualifications to hold office prescribed in the Constitution of Virginia, Art. II, §§1, 5 and Code of Virginia §15.2-1601. The pleadings contain no specific allegations that Mr. Schaefer is ineligible.

An objection to "the conduct or results of the election" must include "specific allegations which, if proven true, would have a probable impact on the outcome of the election..." The pleading falls far short of this. In paragraph 66 the plaintiff states she placed third in the election with 6124 votes and that Mr. Schaefer received 8,326 votes, or a

margin of victory of 1502 votes over the second place candidate, who, to the knowledge of the Court, is not contesting the election. The plaintiff alleges the following about the conduct or results of the election.

(1) There were malfunctions in voting machines in certain precincts causing some machines to cease operating and "miscalculations and mathematical error or errors. (Paragraph 49, 73-74).

(2) There was a 300 vote discrepancy at the Rosemont precinct between what an election official had told one of her representatives and what was officially reported. (Paragraph 50-52).

(3) One of her representatives was not allowed to observe the vote counting at the Ballentine precinct where the plaintiff received 251 of the 353 votes cast.(Paragraphs 53-59)

(4) One of her representatives was not allowed to observe the vote counting at the Lafayette-Winona precinct. (Paragraph 60-61).

(5) One of representatives at the Crossroads precinct was given a tally showing she had received 77 votes at 4:29 p.m.(Paragraph 62).

(6) "Hundreds of voters" at the Zion Grace precinct were given paper ballots with which to vote, but the Electoral Board did not provide the proper documentation concerning these paper ballots. (Paragraphs 64-65).

(7) That certain individuals warned the Electoral Board in August of this year that the touch screen voting machines used in Norfolk could have security problems.(Paragraphs 67-69).

(8) That the officially reported results are "grossly inaccurate and unreliable "and omit "the counting of thousands of votes which were cast." No specifics were given.

The plaintiff makes allegation that are both "specific" and that if proven *could* "have a probable impact on the outcome of the election;" however, those that are specific could have no such impact, and those that could have such an impact are not specific. The Court notes that nowhere in more than six pages of allegations of irregularities in the conduct of the election (paragraphs 49-87) does the plaintiff allege a single discrepancy between the number of voters manually listed in the poll books of a precinct(see Code of Virginia §§24.2-611(B), 24.2-643) and the number of votes reported to have been cast at that precinct on the voting machine. One would expect many such discrepancies if widespread machine malfunctioning the plaintiff alleges had occurred. The Court finds as a matter of law that the plaintiff's "specific allegations" in their entirety, even if proved, would not "have a probable impact on the outcome of the election."

The Court recognizes that access to the courts and the presentation of evidence to a judge or jury is a cherished liberty that ought not lightly be abridged. However, the plaintiff has in the past demonstrated a willingness to abuse that liberty. As a consequence a judge from a distant part of the Commonwealth has enjoined her from filing civil actions without the Court's approval. Of the thousands of plaintiffs who have filed civil cases in this Court over the past eight years, the Court is only aware of three other persons who have been similarly enjoined. When a person has been so enjoined the Court has the duty to the named defendants to review the pleadings to determine if the suit is likely being tendered to harass them and if the plaintiff has any reasonable prospect of prevailing. When public officials have been the objects of such a plaintiff's past suits and a proposed suit, the Court owes a similar duty to the public monies to defend a suit that appears designed to harass them and that has no reasonable prospect of success. This is such a suit.

It is therefore ADJUDGED, ORDERED, and DECREED that the plaintiff's motion for leave to file/amend is DENIED.

Endorsements are waived pursuant to Rule 1:13.

The Clerk shall mail copies of this decree to the plaintiff and to Stephen Heretick, Esq.

ENTER: November 20, 2003

/S/_____
Chancellor

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

SHERRY WHITE-BATTLE,
Plaintiff,

V. CH03-2074

DEMOCRATIC PARTY OF VIRGINIA, *et al.*
Defendants.

DECREE

The Court has reviewed the plaintiff's motion for reconsideration. It is DENIED.

Endorsements are waived pursuant to Rule 1:13.

The Clerk shall mail copies of this decree to the plaintiff and to Stephen Heretick, Esq.

ENTER: December 3, 2004

/S/ _____
Chancellor

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

SHERRY WHITE-BATTLE,
Plaintiff,

v.

CH03-2074

DEMOCRATIC PARTY OF VIRGINIA, *et al.*
Defendants.

DECREE

The Court has reviewed the plaintiff's second motion for reconsideration. It is DENIED. The Court will not review any subsequent motions to reconsider the plaintiff may present.

In the Decree of November 20, 2003, the Court stated "Whether it is considered a motion for leave to file a new suit or to amend a pending suit has no effect on the Court's decision." The papers the plaintiff has presented to the Court regarding the election since October 23, 2003, have been placed in Chancery File CH03-2074 for the convenience of the Clerk's Office.

Endorsements are waived pursuant to Rule 1:13.

The Clerk shall mail copies of this decree to the plaintiff and to Stephen Heretick, Esq.

ENTER: December 15, 2003

/S/ _____
Chancellor

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

SHERRY D. BATTLE, Individually and trading as BATTLE BAIL BONDING CO.,

Plaintiff,

v.

Case No. L02-1383

CHARLES E. POSTON, et al.,

Defendants.

ORDER OF PRE-FILING INJUNCTION

Came this day the defendants, Hon. Charles E. Poston, Hon. John C. Morrison, Jr., Hon. John E. Clarkson, Hon. William F. Rutherford, Hon. Everett A. Martin, Jr., Hon. Lydia C. Taylor, Hon. Marc Jacobson, Hon. Junius P. Fulton, III and Hon. Joseph A. Leafe, (collectively referred to as the "Judge Defendants"), and came also the Honorable Albert Teich and the Honorable Charles Griffith, by counsel, and the Plaintiff Miss Sherry Battle, *pro se.*, upon the defendants' motion for a Pre-Filing Injunction against Sherry D. Battle individually and trading as Battle Bail Bonding Co.

WHEREFORE, it is ADJUDGED, ORDERED AND DECREED that Sherry D. Battle, individually and trading as Battle Bail Bonding Co. is restrained from further filings in this Court and the courts of the State of Virginia without obtaining prior leave of the Court, in which the action is to be instituted, pursuant to the following procedure: the plaintiff, Sherry Battle, shall inform the Court in question of (i) pertinent facts concerning the action to be brought, including the existence of this injunction order and of any outstanding litigation against the proposed defendant and(ii)

that the plaintiff Battle must obtain leave of court to file the action;

And it is further ADJUDGED, ORDERED AND DECREED that to obtain leave of a court to institute an action, the plaintiff Sherry Battle shall:

1. File with such Motion for Judgment or Complaint, a motion captioned as "Motion Pursuant to Court Order Seeking Leave to File";

2. Attach a copy of this Order as Exhibit 1 to that motion;

3. Attach as Exhibit 2 to that motion, a sworn affidavit under penalty of perjury that the claim the plaintiff Sherry Battle(individually and/or trading as Battle Bail Bonding Co.) wishes to present is a new claim never before raised in any court and that such claim is neither frivolous nor intended to harass;

4. Attach as Exhibit 3 to that Motion an identification by listing the caption of each and every suit previously filed by the plaintiff Sherry Battle(individually and/or trading as Battle Bail Bonding Co.) or on the plaintiff Sherry Battle's behalf in any court against each and every defendant to the suit the plaintiff Sherry Battle wishes to file;

5. Attach as Exhibit 4 to that Motion a copy of each such complaint and a certified record of its disposition; and

6. Serve a copy of this Order on each defendant if and when leave to serve the Motion for Judgment or Complaint or Warrant in Debt in the new case is granted;

And is further ADJUDGED, ORDERED, AND DECREED that failure to comply with the terms of this Order may be sufficient grounds for a court to deny any Motion for Leave to File made by the plaintiff Sherry Battle, and further, that failure to advise a court in which the plaintiff Sherry Battle(individually and/or trading as Battle Bail Bonding Co.) has filed a lawsuit, of this order, or, to comply with this Order may be considered by the appropriate court as sufficient grounds to dismiss such as a lawsuit. ANY

SUIT BY MS. BATTLE AGAINST JUDGES OF THIS COURT SHALL BE REFERRED TO THE SUPREME COURT OF VIRGINIA FOR CONSIDERATION BY A DESIGNATED JUDGE.

ENTERED: October 18, 2002

_____
Judge

I ask for this

_____
Edward M. Macon
Counsel to the Judge Defendants

Seen and objected to:

_____
Sherry D. Battle, individually
And trading as Battle Bail Bonding Co.

Seen

_____
Larry Dumville, Esq.
Counsel to Teich and Griffith